

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2019-255-C - ORDER NO. 2019-779
NOVEMBER 19, 2019

IN RE: Application of Smart Communications)	ORDER GRANTING
Holding, Inc. for a Certificate of Public)	CERTIFICATE AND
Convenience and Necessity to Provide)	APPROVING FLEXIBLE
Intrastate Resold Institutional)	AND ALTERNATIVE
Telecommunications Services in the State of)	REGULATION
South Carolina)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Smart Communications Holding, Inc. (“Smart Communications” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide specialized inmate telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. § 58-9-280(B), as amended, Section 253 of the Telecommunications Act of 1996, and the rules and regulations of the Commission. By its Application, Smart Communications also requests flexible regulation of its local exchange service offerings pursuant to Order No. 98-165 in Docket No. 1997-467-C and alternative regulation of its interexchange services consistent with Commission orders, and waivers of certain Commission regulations.

The Commission’s Clerk’s Office instructed Smart Communications to publish a one-time Notice of Filing in newspapers of general circulation in the areas of the state

affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of the Company and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Smart Communications complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. There were no intervenors in this proceeding.

On October 7, 2019, counsel for the South Carolina Office of Regulatory Staff (“ORS”) filed a letter with the Commission setting out that it had reviewed the Application and did not oppose the Commission granting the Application and that it did not intend to attend the hearing. According to the letter from ORS, the ORS Audit and Telecommunications Departments reviewed the Company’s Application and filings to assess the Company’s financial, technical and managerial resources. Based upon its review, ORS concluded that the Company possesses the resources needed to provide the services requested and that the Company’s request for a Certificate of Public Convenience and Necessity is consistent with the public interest.

A hearing on the Application was held on October 28, 2019, at 10 a.m. in the offices of the Commission in Columbia, South Carolina, before Randall Dong, Hearing Examiner. Smart Communications was represented by Samuel J. Wellborn, Esquire. ORS did not appear at the hearing.

Terry Whiteside, Vice President of Operations for the Company, appeared at the hearing by videoconference and testified in support of the Application. The Application and its public exhibits were entered into the record as Hearing Exhibit No. 1, and Confidential Exhibit C to the Application—which contains the Company’s financial

statements—was entered into the record as Hearing Exhibit No. 2. The Hearing Examiner granted the Company’s request that Hearing Exhibit No. 2 remain under seal.

The record reveals that Smart Communications is a Florida corporation registered as a foreign corporation with the South Carolina Secretary of State. According to Mr. Whiteside, the Company seeks authority to provide automated operator-assisted collect and prepaid calling services to inmates and other incarcerated persons in confinement institutions throughout the State of South Carolina. Mr. Whiteside explained that the Company’s Application and its associated exhibits further describe the Company’s services and operations.

Mr. Whiteside also discussed Smart Communications’ technical, financial and managerial ability to provide the services for which it seeks authority. Mr. Whiteside offered that Smart Communications is financially able to support its operations in South Carolina. With regard to management and technical capabilities, the Company’s Application and Mr. Whiteside’s testimony both support the conclusion that the Smart Communications management team has extensive experience in the telecommunications industry that will allow it to be a successful telecommunications carrier within the State of South Carolina. Mr. Whiteside also testified that Smart Communications will meet the service standards of the Commission.

The Company requests waiver of S.C. Code Ann. Regs. 103-610 since the Company’s books are maintained at its headquarters in Seminole, Florida. Further, the Company requests an exemption from record-keeping policies that require maintenance of financial records in conformance with the Uniform System of Accounts (“USOA”). Smart

Communications maintains its books in accordance with Generally Accepted Accounting Principles (“GAAP”). In addition, the Company requests waiver of S.C. Code Ann. Regs. 103-612.2.3’s requirement that it file a map since it seeks statewide certification.

After full consideration of the applicable law, the Company’s Application, and the evidence represented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Smart Communications was formed as a Florida corporation and is registered as a foreign corporation authorized to do business in South Carolina by the Secretary of State.

2. Smart Communications has no reported record of violations of regulatory laws or regulations in the jurisdictions in which it is currently operating.

3. Smart Communications desires authority to operate as a provider of resold local exchange and resold long-distance services in South Carolina.

4. We find that Smart Communications possesses the managerial experience and capability to operate as a provider of resold local exchange and interexchange services in South Carolina.

5. We find, based on a review of the financial statements and the testimony submitted at the hearing, that Smart Communications possesses sufficient financial resources to provide the services as described in its Application and testimony.

6. We find that the issuance of a Certificate of Public Convenience and Necessity to Smart Communications to operate as an interexchange and local exchange

telecommunications service provider in South Carolina would be in the best interest of the citizens of South Carolina by increasing the level of competition in South Carolina, by providing an alternative source for telecommunications services, and by maximizing customer savings, lowering unit costs and improving customer service.

7. Smart Communications currently maintains its books and records in Florida and requests waiver of S.C. Code Ann. Regs. 103-610. The Commission finds Smart Communications' requested waiver reasonable and understands the potential difficulty presented to Smart Communications should the waiver not be granted. Further, we find that waiver of S.C. Code Ann. Regs. 103-610 is in the public interest. We also believe that exemption from the policies that would require the Company to keep its records under the USOA is reasonable.

8. We also find that waiver of the requirement to file operating maps pursuant to S.C. Code Ann. Regs. 103-612.2.3 is reasonable since the Company seeks statewide authority.

9. Since Smart Communications does not intend to provide retail residential local exchange services, we find that it is appropriate and reasonable to waive S.C. Code Ann. Regs. 103-607.

10. The Company has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. § 58-9-280(B)(1) (2015).

11. The Commission finds that the Company’s “provision of service will not adversely impact the availability of affordable local exchange service.” S.C. Code Ann. § 58-9-280(B)(3) (2015).

12. The Commission finds that the Company will support universally available telephone service at affordable rates. S.C. Code Ann. § 58-9-280(B)(4) (2015).

13. The Commission finds that services to be provided by the Company will meet the service standards of the Commission. S.C. Code Ann. § 58-9-280(B)(2) (2015).

14. The Commission finds that the provision of local exchange service by the Company “does not otherwise adversely impact the public interest.” S.C. Code Ann. § 58-9-280(B)(5) (2015).

15. The Commission notes that ORS does not oppose the granting of the Application and elected not to attend the hearing.

CONCLUSIONS OF LAW

1. The Commission concludes that Smart Communications possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that the Company will participate in the support of universally available telephone service at affordable rates to the extent that the Company may be required to do so by the Commission.

3. The Commission concludes that the Company will provide services which will meet the service standards of the Commission.

4. The Commission concludes that approval of Smart Communications' Application to provide intrastate telecommunications services within South Carolina will serve the public interest by enhancing competition in the State of South Carolina, by offering additional service offerings to South Carolina's consumers, and by providing for efficient use of existing telecommunications resources.

5. The Commission concludes that the provision of telecommunications service by Smart Communications will not adversely impact the public interest.

6. The Commission concludes that the issuance of the authority to provide intrastate local exchange and interexchange telecommunications services as requested by Smart Communications and as set forth in its Application and Mr. Whiteside's testimony is in the best interests of the citizens of the State of South Carolina.

7. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to Smart Communications to provide resold local exchange and interexchange telecommunications services within South Carolina.

8. Should Smart Communications offer residential interexchange services in the future, the Commission adopts a rate design for Smart Communications for its residential interexchange services which includes maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. *In Re: Application of GTE Sprint Communications Corporation*, Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

9. Should Smart Communications offer residential interexchange services in the future, Smart Communications shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. Smart Communications shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. *In Re: Application of GTE Sprint Communications*, Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. § 58-9-540 (2015).

10. The Commission concludes that Smart Communications' intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and

operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carriers calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$.035 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing, subject to possible challenge within seven (7) days of the filing, in which case the tariff filing would be suspended pending further order of the Commission.

11. The Commission concludes the Company’s local exchange telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for the Company’s competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels approved by the Commission. Further, the Company’s local exchange service tariff filings are presumed valid upon filing, subject to possible challenge within thirty (30) days of the tariff filing, in which case the tariff filing would be suspended pending further order of the

Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

12. We conclude that Smart Communications' request for waiver of S.C. Code Ann. Regs. 103-610 should be granted as strict compliance with the regulation would cause undue hardship on Smart Communications. We also grant exemption from the policies requiring use of USOA. In addition, we grant waiver of S.C. Code Ann. Regs. 103-612.2.3 and 103-607.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to Smart Communications to provide intrastate local exchange and interexchange telecommunications services within the State of South Carolina.

2. The Company's rate designs for its products shall conform to those described in the Conclusions of Law above.

3. If it has not already done so by the date of issuance of this Order, the Company shall file its tariffs using the Commission's e-filing system for tariffs within 30 days of the issuance of this Order. The tariffs should be electronically filed in a text searchable PDF format using the commission's DMS system (<https://dms.psc.sc.gov>). An additional copy should be sent via email to etariff@psc.sc.gov to be included in the Commission's ETariff System (<https://etariff.psc.sc.gov>). Future revisions to the tariffs should be made using the ETariff System. The tariffs shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

4. The Company shall keep on file at all times with the Commission and ORS a current price list to provide customers with information from which they may determine the Company's actual rates charged for inmate calling.

5. The Company's service is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and interexchange carriers should be treated similarly.

6. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. Smart Communications shall resell the services of only those interexchange carriers or local exchange carriers ("LECs") authorized to do business in South Carolina by this Commission.

8. With regard to the origination and termination of toll calls within the same LATA, Smart Communications shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, Smart Communications shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

9. Smart Communications shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Smart Communications shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.sc.gov/Forms or at the ORS's website at www.ors.sc.gov. The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1st**.

10. Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31st** of each year. The proper form for filing gross receipts information can be found at the ORS website at www.ors.sc.gov, and the appropriate form is entitled "Gross Receipts Form."

11. Each telecommunications company certified in South Carolina is required to file annually with the ORS the Intrastate Universal Service Fund ("USF") worksheet, which may be found on the ORS's website at www.ors.sc.gov. This worksheet provides ORS information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than **August 1st** with the Commission and ORS.

12. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory

level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Smart Communications shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the ORS’s website at www.ors.sc.gov; this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

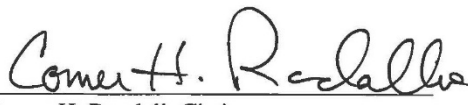
13. The Company is directed to comply with all Rules and Regulations of the Commission unless a regulation is specifically waived by the Commission.


14. Smart Communications requested waiver of S.C. Code Ann. Regs. 103-610, which requires the Company to maintain its financial books and records within the State of South Carolina. Smart Communications is granted permission to maintain its financial books and records at its principal headquarters provided that Smart Communications makes its books and records available for examination upon request by the ORS. Further, the Commission acknowledges that Smart Communications shall maintain its financial records in conformance with GAAP. Smart Communications is directed to comply with all Rules and Regulations of the Commission unless a regulation is specifically waived by the Commission. Smart Communications is also granted waiver of the requirement to file a map pursuant to S.C. Code Ann. Regs. 103-612.2.3. Finally, we waive the requirement that

Smart Communications file a bond pursuant to S.C. Code Ann. Regs. 103-607 until such time as Smart Communications provides retail residential local exchange service in South Carolina.

15. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Comer H. Randall, Chairman


Justin T. Williams, Vice Chairman

(SEAL)